

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Closed Captioning and Video)
Description of Video Programming)
)
Implementation of Section 305)
of the Telecommunications Act of 1996)
)
Video Programming Accessibility)

MM Docket No. 95-176

To: The Commission

**COMMENTS OF
THE ARCHDIOCESE OF LOS ANGELES EDUCATION AND
WELFARE CORPORATION, THE DIOCESE OF ORANGE
EDUCATION AND WELFARE CORPORATION AND
CARITAS TELECOMMUNICATIONS, INC.**

The Archdiocese of Los Angeles Education and Welfare Corporation ("Archdiocese"), the Diocese of Orange Education and Welfare Corporation ("Diocese"), and Caritas Telecommunications, Inc. ("Caritas") (jointly referred to as the "ITFS Licensees"), through their attorneys, hereby submit these comments on the above-referenced Notice of Proposed Rulemaking regarding closed captioning and video description of video programming.^{1/} These comments focus on the closed captioning issues addressed by the NPRM. As discussed more fully below, the ITFS Licensees strongly believe that both Instructional Television Fixed Service (ITFS), as a service, and ITFS programming, as a class, should be exempted from the closed captioning requirements of Section 713 of the Telecommunications Act of 1996.^{2/}

^{1/} Notice of Proposed Rulemaking, MM Docket No. 95-176, FCC 97-4 (rel. Jan. 17, 1997) ("NPRM").

^{2/} 47 U.S.C. § 613 (hereafter "Section 713").

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I. INTRODUCTION

The Archdiocese has been licensed by the FCC to operate a four-channel ITFS facility from a site at Mt. Wilson for over 30 years.^{3/} The facility has been used to provide instructional, cultural, and religious programming to hundreds of parochial schools and thousands of students in the Los Angeles vicinity. The Diocese has been licensed by the FCC to operate a four-channel ITFS facility from a site at Modjeska Peak, California for approximately 20 years.^{4/} The Diocese provides educational television to the schools and parishes and other selected sites of the Roman Catholic Diocese of Orange, California. Caritas holds several ITFS licenses and serves as the educational television provider for the schools and parishes of the Diocese of San Bernardino.^{5/} Because of the full-curriculum programming that it offers, Caritas also provides programming to public schools, home-schools, and other private schools within its coverage area.

The ITFS Licensees support the goal of Section 713 to provide access to television for persons with hearing disabilities. However, requiring ITFS licensees to caption their programming is not necessary to reach this goal. Indeed, such a requirement would, paradoxically, *reduce* the availability of educational programming to persons both with and without hearing disabilities.

II. DISCUSSION

A. **The Commission Should Exempt ITFS as a Service From the Captioning Requirement Because the Economic Burden of Imposing Such a Requirement on ITFS Licensees Would Outweigh Any Benefits to the Hearing Impaired.**

Section 713(d)(1) permits the FCC to exempt video services for which the requirement to close caption programming would be economically burdensome. The Commission has interpreted

^{3/} KSW-93, channels G1-G4, Los Angeles.

^{4/} WHG-396, channels G1-G4, Los Angeles.

^{5/} Together, Caritas and the Diocese of San Bernardino are licensees of WHG-356, channels D1-D4, Running Springs; WLX-238, channels D1-D4, Riverside; WHR-904, channels G1-G4, North Palm Springs; WHR-927, channels B1-B4, Beaumont.

this provision as allowing it to exempt those services for which the economic burden of captioning outweighs the benefits to be derived from captioning.^{6/} The Commission tentatively proposes that *no* video services should be exempted, since "all classes of providers appear to have the technical capability to deliver closed captioning to their viewers intact."^{7/} However, the fact that ITFS licensees may have the technical capability to deliver closed captioning has no relevance to the analysis of the applicability of the economic burden exemption included in Section 713. As demonstrated below, using the Commission's cost-benefit analysis, the balance tilts decisively in favor of an exemption for ITFS licensees.

1. Requiring ITFS licensees to caption would be economically burdensome.

An ITFS licensee must be either an accredited school or an organization devoted to formal education.^{8/} Such entities typically operate on restricted budgets, and any new costs associated with the provision of closed captioning would necessarily come at the expense of other educational services.^{9/} Much of the programming provided by ITFS licensees is prerecorded and would require "off line" captioning. The cost of providing this captioning would be extremely burdensome on ITFS licensees, and the net effect of compelling ITFS licensees to caption would be to reduce drastically the amount of new educational material available to students.

For example, Caritas has an operating budget of approximately \$175,000 a year that enables it to maintain its current level of services for schools. If Caritas were required to caption all its programming, it would have two options: either perform the captioning itself, or hire an

^{6/} NPRM at ¶ 70.

^{7/} NPRM at ¶ 85.

^{8/} See 47 C.F.R. § 74.932(a).

^{9/} The Commission's own findings show that more than 95 percent of ITFS licensees qualify for small business status. NPRM at ¶ 134.

outside company to do it. If Caritas were to apply closed captioning itself, it estimates that personnel, equipment, and other necessary expenses would total approximately \$100,000 per year. This would be an impossible requirement to meet without additional funding. The cost for Caritas to pay outside companies to close caption *just* its prerecorded programming (a total of 720 hours per year) would range from \$576,000 to \$1,800,000, using the FCC's own cost estimates of \$800 to \$2500 per hour.^{10/} Obviously, either option would be unworkable.

Likewise, a closed captioning requirement would create significant problems for the Archdiocese. For example, virtually none of the televisions in the Archdiocese's schools have the capability to decode closed captioning. The expense of replacing the approximately 500 televisions in these schools is estimated to be \$150,000. Further, the Archdiocese has approximately 3,000 hours of library programming which it airs on a rotating basis. The cost of closed captioning this programming would range from \$2,400,000 to \$7,500,000, based on the FCC's estimates. Significantly, much of this material *cannot* be closed captioned without loss of the programming. Much of the library programming is over 25 years old and has been re-recorded many times. No originals can be obtained of this programming, because its producers have long been out of business. Another re-recording, which would be required for closed captioning, would result in degradation of many of these tapes to the point of making them unusable.

2. The benefits to be derived from captioning by ITFS licensees do not outweigh the economic burden.

The Commission must take into account the particular nature of the audiences served by ITFS licensees in assessing the need to mandate closed captioning for all ITFS licensees. This is

^{10/} The Commission has stated that "off line" captioning, generally used for prerecorded programming, entails a labor intensive process to ensure that the captions are placed precisely where the corresponding audio appears and then locked into the proper position on the program tape. Estimates of the cost of this type of captioning range from \$800 to \$2500 per hour. NPRM at ¶ 18.

because, unlike the other services covered under Section 713, such as satellite and multipoint distribution services,^{11/} ITFS is not a service targeted at the general public. Instead, ITFS is intended to provide "formal educational and cultural development . . . to students enrolled in accredited public and private schools, colleges and universities."^{12/} Requiring ITFS licensees to apply closed captioning would be unnecessary, wasteful, and would be detrimental to the operations of schools throughout the nation.

Hearing-impaired individuals enrolled in schools, as opposed to hearing-impaired members of the general public, already have programs in place to accommodate their disabilities. Many schools provide sign-language interpreters or other assistance to students with hearing disabilities which would make it unnecessary for programs shown to those students to be closed captioned. Further, closed captioning is only one method by which schools may choose to accommodate their hearing-impaired students. Schools already have the incentive to make the most economically efficient choices to accommodate disabled students, and forcing schools to pay for closed captioning encroaches upon local control over their spending. Schools should not be compelled to pay for programming with closed captioning when they have already made arrangements to accommodate their students with hearing disabilities.

Moreover, a federal law currently creates a comprehensive entitlement program for states to provide hearing-impaired students with special assistance to accommodate their disabilities. The Individuals with Disabilities Education Act (the "Act") imposes a responsibility on all state and

^{11/} The Commission notes that the provisions of Section 713 apply to over-the-air broadcast television service (both commercial and noncommercial) and all multichannel video programming distributors, including (along with ITFS): direct-to-home satellite services, including direct broadcast satellite services and home satellite dishes; wireless cable systems using the multichannel multipoint distribution service or local multipoint distribution; satellite master antenna television; and open video systems. NPRM at ¶ 5.

^{12/} 47 C.F.R. § 74.931.

local educational agencies receiving such funds to provide education for all children with disabilities (including hearing-impaired children) which emphasizes special education and related services designed to meet their unique needs.^{13/} The Act has been interpreted by the Ninth Circuit Court of Appeals to require school districts to provide special education services to children in both public and private schools.^{14/}

Finally, many ITFS licensees do not have *any* hearing-impaired students, because in their jurisdictions alternate schools are established for these students.^{15/} Money spent for closed captioning by these entities would be completely wasted. Similarly, when ITFS licensees provide teacher and in-service training programs -- an important and beneficial use for ITFS frequencies employed by many ITFS licensees, including the Archdiocese -- the users of such training are identifiable beforehand. In the rare cases when one of those to be trained has a hearing disability, other arrangements can be made by the school to accommodate that person. In all other cases, closed captioning is unnecessary.

B. The Commission's Rules Should Also Exempt ITFS Programming as a Class.

Given the recent proliferation of excess capacity agreements between ITFS licensees and wireless cable providers, it is imperative that the Commission exempt ITFS programming, as well

^{13/} 20 U.S.C.A. §§ 1400-1491o (West 1990 and Supp. 1996).

^{14/} See *Dreher v. Amphitheater Unified School District*, 22 F.3d 228, 234 (9th Cir. 1994). According to the court in *Dreher*, the school district where the disabled child resides must create an Individualized Education Program for each disabled child, and provide related services to each child, whether at a public or a private school, which are in conformity with that program.

^{15/} For instance, the Joint Comments of ITFS Parties state that the University of Minnesota, which provides graduate level engineering programming to its students, has in over 25 years never had a request for captioning or special arrangements for hearing impaired students. *ITFS Parties* at p. 6.

as ITFS licensees, from the closed captioning requirements.^{16/} ITFS licensees, in negotiating excess capacity agreements, often seek to make their programming available to subscribers on traditional and wireless cable systems. More critically, many schools, including the Archdiocese and Caritas, want to ensure that any of their students who are homebound due to illness or other reasons have access to ITFS programming as part of their education through channels they receive on their televisions via cable and wireless services.

If the Commission exempts ITFS licensees from the captioning requirement, but fails to grant an exemption for ITFS *programming* as well, then ITFS licensees would face a significant obstacle in negotiating for carriage of their programming on wireless cable systems. Wireless cable providers, if not exempt from the closed captioning requirements, would be faced with the choice of applying closed captioning themselves or blocking ITFS programming to subscribers. Many would choose the latter, thus depriving their subscribers of access to valuable instructional, educational and cultural programming. Thus, ironically, the FCC's attempt to increase access to programming for the hearing disabled would result in the loss of *all* access by wireless cable system subscribers to ITFS programming.

III. CONCLUSION

Section 713 is intended to further Congress' goal "to ensure that all Americans ultimately have access to video services and programs, particularly as video programming becomes an increasingly important part of the home, school and workplace."^{17/} In implementing Section 713, the Commission must not lose sight of the actual impact of the requirement of closed captioning on particular providers and types of programming. ITFS licensees and ITFS programming are

^{16/} ITFS programming, as defined in the Commission's rules, includes formal educational programming offered for credit, as well as cultural and general educational programming, teacher and in-service training, and administrative programming. See 74 C.F.R. § 74.931(a), (b) and (c).

^{17/} NPRM at ¶ 2.

indisputably beneficial to students and to those who have access to ITFS programming through cable providers. Section 713 should not be implemented in a manner that has an adverse impact on the services which ITFS licensees can provide, or on the general availability of valuable educational programming.

Respectfully submitted,

THE ARCHDIOCESE OF LOS ANGELES EDUCATION
AND WELFARE CORPORATION,
THE DIOCESE OF ORANGE EDUCATION AND
WELFARE CORPORATION, and
CARITAS TELECOMMUNICATIONS, INC.

By: 

Edwin N. Lavergne

J. Thomas Nolan

Laura C. Fentonmiller

Ginsburg, Feldman and Bress, Chartered

1250 Connecticut Avenue, NW

Washington, DC 20036

202-637-9000

Its Attorneys

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